

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FELIX GARCIA, HUSBAND OF §
MAGDALENA GARCIA, DECEASED §
Plaintiff §
§
VS. § CIVIL ACTION NO.: 22-cv-136
WAL-MART STORES TEXAS, LLC §
Defendant § JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

Defendant, Wal-Mart Stores Texas, LLC files this Notice of Removal pursuant to 28 U.S.C. § 1441, as follows:

Commencement and Service

1. On January 7, 2022, Plaintiff, Felix Garcia, Husband of Magalena Garcia, Deceased, commenced this action against Wal-Mart Stores Texas, LLC by filing Plaintiff's Original Petition in the 37th District Court of Bexar County, Texas, Cause No. 2022CI00429; *Felix Garcia, Husband of Magdalena Garcia, Deceased.* A copy of Plaintiff's Original Petition is attached hereto as **Exhibit A.** Wal-Mart Stores Texas, LLC received service of process and Plaintiff's Original Petition on January 21, 2022. A copy of the Return of Service and Citation is attached hereto as **Exhibit B.**

2. On February 11, 2022, Wal-Mart Stores Texas, LLC filed its Original Answer to Plaintiff's Original Petition which is attached as **Exhibit C** and Demand for Jury Trial, attached as **Exhibit D.**

3. This notice of removal is filed within thirty days (30) of the receipt of the Plaintiff's Original Petition which discloses that this matter involves an amount in controversy that or which exceeds \$75,000.00 and is timely filed under 28 U.S.C. § 1446(b). This notice of removal is filed

within one year of the commencement of this action and is thus timely pursuant to 28 U.S.C. § 1446(b).

Grounds for Removal

4. Wal-Mart Stores Texas, LLC is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship. (See **Exhibit A, Plaintiff's Original Petition at paragraph 21, wherein Plaintiff pleads that he "...seeks monetary relief of OVER TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) but not more than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00)...".**

Diversity of Citizenship

5. This is an action between parties with diversity of citizenship.

6. Plaintiff is a citizen of Texas.

7. Defendant Wal-Mart Stores Texas, LLC is a limited liability company formed under the laws of Delaware, with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all of its members. *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). The sole member of Wal-Mart Stores Texas, LLC is Wal-Mart Real Estate Business Trust. Wal-Mart Real Estate Business Trust is a Delaware statutory trust with its principal place of business in Arkansas. The citizenship of a statutory trust is the citizenship of its members, which includes its shareholders. *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed Certificates Series 2006-24*, 866 F.3d 351, 358 (5th Cir. 2017); *U.S. Bank Tr., N.A. v. Dupre*, 615CV0558LEKTWD, 2016 WL 5107123, at *4 (N.D.N.Y. Sept. 20, 2016) (finding that a

Delaware statutory trust “seems precisely like the type [of trust] considered by the Supreme Court in *Americold*”). The sole unit/shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co. Wal-Mart Property Co. is a corporation formed under the laws of the State of Delaware with its principal place of business in the State of Arkansas. A corporation is ““a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019) (quoting 28 U.S.C. § 1332(c)(1)). Therefore, Wal-Mart Property Co. is a citizen of Delaware and Arkansas. Accordingly, Defendant Wal-Mart Stores Texas, LLC is a citizen of Delaware and Arkansas.

8. No change of citizenship has occurred since commencement of the state court action. Therefore, diversity of citizenship exists among the parties.

Amount in Controversy

9. The amount in controversy exceeds the sum of \$75,000. (See Exhibit A, Plaintiff’s Original Petition at paragraph 21).

Venue

10. Venue lies in the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the Plaintiff filed the state court action in this judicial district and division.

Notice

11. Contemporaneous with the filing of this notice of removal, Defendant will give notice of this filing to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon Plaintiff’s counsel and all other parties’ counsel of record, a notice of the filing of this notice of removal.

Jury Demand

12. Defendant, Wal-Mart Stores Texas, LLC demanded a jury trial in the state court action.

State Court Pleadings

13. Copies of state court pleadings which are referenced within the Notice are attached to this Notice of Removal as **Exhibits A through D**. This case is being removed from the 37th Judicial District Court of Bexar County, Texas.

Exhibits to Notice of Removal

14. The following documents are attached to this Notice as correspondingly lettered exhibits:
- A. Plaintiff's Original Petition.
 - B. Return of Service and Citation.
 - C. Defendant's Original Answer to Plaintiff's Original Petition.
 - D. Defendant's Demand for Jury Trial.
 - E. Request for Process.
 - F. Case Summary.
 - G. List of Counsel of Record.

WHEREFORE, Defendant, Wal-Mart Stores Texas, LLC pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 37th Judicial District Court of Bexar County, Texas.

Respectfully submitted,

DAW & RAY
A LIMITED LIABILITY PARTNERSHIP

/s/ James K. Floyd

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**ATTORNEYS FOR DEFENDANT,
WAL-MART STORES TEXAS, LLC**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record in accordance with the FRCP on this the 16th day of February, 2022.

Blake Harmon
Law Offices of Thomas J. Henry
5711 University Heights Blvd., Suite 101
San Antonio, Texas 78249
ATTORNEY FOR PLAINTIFF

Via Priority Mail

/s/ James K. Floyd
James K. Floyd